1947

File No. S. Bij 3/47

Legal Department 47

A Branch

Examined

K

Station

Suit Bijapur

Civil Suit No 1157 of 1946

1) Kundappa Doddappa Desai --- P/aff.

Versus

1) The Province of Bombay --- Defe

Claim Rs 5/-

Re:- Encroachment on Govt. land.

P.37
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File No S. Bij. 3/47

S. Bij 3/47

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		vs.	
		Province of B'bay	
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1)	Printed I. D. G.R. No. 5028-A 16-5-1947.	Sanctioning the defence of the suit.	5.
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This is a simple encroachment suit in which the plaintiff claims a plot of land in the Gaothan of the village of Kalkeri. The land was held to be of Government's ownership in an inquiry under section 37 (2) of the Land Revenue Code.

The defence of the suit may be sanctioned on the lines of the appended brief and written statement.

8/5/47

A.L.R. R.T. 9/5

R.L.A. 9/5

Secy/RD 10/5

x 4979 dt. 11/5/47.

In the Court of the Civil Judge (Senior Division)
Bijapur.

Civil Suit No. 454 of 1946.

Kuntappa Doddappa Desai - - - - - - - - Plaintiff;

Vs.

The Province of Bombay - - - - - - - - - - Defendant.

The following is the written statement of the Defendant in this suit.

1. The plaintiff's claim of ownership to the suit land is denied.

2. It is denied that the site is of plaintiff's ownership and has been in his possession and that of his predecessors continuously for more than 60 years. His claim on the bases of adverse possession is not correct and hence denied.

3. The allegations against the Revenue officers made in paragraph 3 of the plaint are not admitted. The Prant Officer has held after considering the evidence before him that the suit site belonged to Government. His decision is correct and binding on the plaintiff.

4. The plaintiff is not entitled to any relief.

5. It is therefore submitted that the suit fails and must be dismissed with costs.

District Government Pleader,
Bijapur.

I, District Government Pleader, Bijapur, do hereby declare that what is stated in paragraphs 1 to 5 above is true according to the information received and believed to be true. This verification is made at on the day of. 1947.

District Government Pleader,
Bijapur.

Kc.5.5.

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Suits:
Bijapur.
Encroachment on Government land.

GOVERNMENT OF BOMBAY.

LEGAL DEPARTMENT.

Resolution No. 5028-A.

Bombay Castle, 16th May 1947.

Letter from the Collector of Bijapur, No. L.A.W. 180, dated the 8th April 1947—Forwarding papers in the suit noted in the margin and requesting sanction to its defence.

IN THE COURT OF THE CIVIL JUDGE (SENIOR DIVISION), BIJAPUR.

CIVIL SUIT No. 454 OF 1946.

Kuntappa Doddappa Desai .. .. Plaintiff;

versus

The Province of Bombay .. .. Defendant.

Claim—Rs. 5.

Endorsement by the Commissioner, Southern Division, No. L.S.T.-373, dated the 16th April 1947—Forwarding the above with his concurrence.

Memorandum to the District Government Pleader, Bijapur, No. 5028, dated the 16th May 1947—Forwarding a copy of the brief with its accompaniments in advance.

RESOLUTION.—Sanction is accorded to the defence of the suit on the lines of the accompanying brief.

By order of the Governor of Bombay,

P. M. LAD,
Original Secretary to Government.

G. R., No. 5028-A, L. D., dated the 16th May 1947.

To

* The Revenue Department,
* The Commissioner, Southern Division,
* The Collector of Bijapur,
The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Bijapur (with two copies of the brief).

*With a copy of the brief.

No. of 1947.

Copy forwarded for information and guidance to

Sub. after issue.
2 file in S. Bijapur (New file) 47
A.C. 16/12.
A.S. 15/12

15/12

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BIJAPUR CIVIL SUIT No. 454 OF 1946.

Chronological Statement of Facts.

File I, p. 15

1. The suit is for a declaration of the plaintiff's title to a plot of land admeasuring 68′ × 35′ in the village of Kalkeri (Taluka Sindgi). The land in dispute is shaded red in the sketch, dated 22nd August 1942.

Do. p. 1

2. On 18th July 1942 the village officers of Kalkeri reported to the Mamlatdar of Sindgi that the plaintiff had encroached upon the suit land which was Government *Gaothan* land by storing stones, etc.

Do. p. 69

3. After making inquiries and personally inspecting the site the Mamlatdar reported to the Prant Officer on 10th April 1943 that the plaintiff claimed an inquiry under section 37(2) of the Land Revenue Code.

Do. p. 85

4. On 27th May 1943 the Prant Officer, after holding an inquiry under section 37 (2) of the Land Revenue Code, declared that the site in dispute belonged to Government.

File II, p. 1

5. On 4th November 1943 the plaintiff preferred an appeal to the Collector. At the hearing of the appeal, the plaintiff's pleader gave up the grounds of appeal and conceded Government's title to the land. The appeal was therefore dismissed by the Collector's order dated 15th September 1944.

Do. p. 37

Do. p. 77

6. The plaintiff preferred a further appeal to the Bombay Revenue Tribunal but it was dismissed on 18th August 1945.

Do. p. 93

7. On 4th July 1946 the plaintiff gave notice of suit under section 80 of the Civil Procedure Code and on 7th October 1946 he filed the present suit in the Court of Civil Judge, Senior Division, Bijapur.

Grounds of Defence.

1. The plaintiff's allegation regarding his title to the land in suit should be denied and he should be put to strict proof thereof. The Prant Officer held that the site belonged to Government after a careful consideration of the oral and documentary evidence before him. The plaintiff did not appear at the hearing before the Prant Officer although notice was issued to him of the date of hearing. The order of the Prant Officer is *prima facie* correct and binding on the plaintiff. In the preliminary inquiry conducted by the Mamlatdar the plaintiff appears to have relied upon two documents. He alleged that he had purchased the disputed site from one Chanbassappa Sangappa Deshmukh of Kesapur under a sale deed, dated 29th July 1927. The plaintiff must therefore show that his vendor Chanbassappa was the absolute owner of the property, for, obviously the sale deed cannot confer upon him any better title than his vendor had in the suit property. For this purpose the plaintiff apparently relies on another sale deed, dated 16th November 1883, between third parties in respect of a house to the north of the land in suit. The plaintiff relies upon a recital in this document to the effect that to the south of the property sold there is an open site of Sangappa Deshmukh of Kasapur (presumably the father of the plaintiff's vendor). Except this solitary recital in an old document between third parties, there is no other cogent and reliable evidence to prove the title of the plaintiff's vendor. The recital is inconclusive and does not necessarily prove the vendor's title. In the first place, Government was not a party to either of these documents and consequently

File I, p. 25

Do. p. 27

cannot be held bound by the recitals therein (*see* Banga Chandra *v.* Jagat Kishore I.L.R. 44 Cal. 186 ; Shrinivasdas *v.* Meharbai I.L.R. 43 Bom. 300). Secondly, even old documents, have little, if any probative value unless they are corroborated by evidence of possession. There is no evidence to show that the plaintiff or his predecessors-in-title were ever in juridical possession of the land. What constitutes juridical possession has been considered in the cases of Vasta *v.* Secretary of State I. L. R. 45 Bom. 789 and Suraji *v.* Secretary of State 39 Bom. L. R. 216. It has been held that such acts as tethering of cattle, or stacking fire wood, grass or stone on the encroached land are acts of user which do not amount to juridical possession. The suit land is open unoccupied land forming part of the village *Gaothan*. There is therefore a presumption of ownership in Government's favour under section 37(1) of the Land Revenue Code and if the plaintiff's evidence as to possession is vague and indeterminate, the rule of law is that possession follows title (*see* Bhupendra Narayan *v.* Rajeshwar Prasad I.L.R. 58 Cal. 80).

2. For the same reason, the plaintiff's claim to the suit land on the basis of adverse possession is also untenable. It is a settled rule of law that possession in order to be adverse must be for the full statutory period of 60 years and must be adequate in continuity, publicity and extent (*see* Articles 144 and 149 of schedule I to the Indian Limitation Act and the case cited thereunder). The plaintiff should be put to strict proof of his allegations regarding adverse possession.

3. For the above reasons it should be urged that the suit fails and must be dismissed with costs.

S. Bijapur — 3/47
(Now file)

11/m

Civil Suit No: 454 of 1946.

In the Court of the Civil Judge, Sr. Dn.
Bijapur.

1. Kuntappa Doddappa Desai
of Kalkeri.... ... Plaintiff.

Vs.

1. The Province of Bombay... Defendant.

Herein the Commissioner appointed by the Court submits his report as under

1. In accordance with the Commission Rix Patra, I gave notice to the pleaders on both the side on 14.8.1948 that I would execute the commission -- work on 22.8.1948 at 6 A.M. So also I informed the Mamlatdar Taluka Simiari to keep somebody at Kalkeri on behalf of the Govt., at 8 A.M. Then I went to Kalkeri on 21.8.1948 and reached it at 10. P.M. In the morning of 22.8.1948 I gave notice to the village officers to be present in the suit site at 8 A.M.

2. Thus, I went to the site in the company of the village officers and two panchas. Then I asked the plaintiff to show the site in dispute which is 68" x 35". This site is as mentioned in the plain about 30 ft towards orth from Ramappaix Desai's

house. Then I asked the plaintiff to show the places where the commission should get ~~executed~~ excavated. Then he showed several places and the commissioner asked him to engage some coolies. Then about 8 coolies were engaged to dug these places as suggested by the plaintiff.

3. The plaintiff ~~showed~~ 9 strips ~~were one~~ are shown by two lines and they are measured and shown in the accompanying plans.

(1) 60 x 2 x 1 (5) 9 x 2 x 2½

(2) 28 x 9 2 ½ (6) 16 x 2 x 2.

(3) 8 x 2 1½ (7) 13 x 2 x 2

(4) 11 x 2 x 2½ (8) 8 x 2 x 2

(9). 35 x 2 x 2.

From the excavations, I found there are foundations walls and they are ~~already~~ all visible. In some places big stones such 4½ x 3 were found in the foundation and one big stone was found in the earth which appears to have been used as "Chavani" on the door. In nearly half of the site there is heap of earth which appears to be due to the fall of roof. In this way, I got ~~excavated~~ excavated these places and the foundation walls are visible. From this, it can be said that there may be foundation walls in other places also. But as it was a heavy work and as plaintiff said - it would suffice for his purpose, I stopped further excavation.

Then a rough plan was made and measurements were taken and panchnama was drawn up but the village officers refused to sign. Then I closed the ~~will~~ work and returned. The plan is prepared and is attached herewith. The commissioner's The panchnama & the notice are attached herewith

I have prepared the map of the site in dispute and shown the places where I got exavated and their measurements

shown xxx therein. I returned on Monday at 1 A.M. My fees should be ordered to be given to me. I asked the plaintiff to pay the labour charged ~~to be given~~ to the coolies.

Bijapur:
Date:-

Commissioner.

~~Presented to Court on :-~~ 26/8/46

Commissioner.

Encl:

Judgment.

Suit for the issue of a direction to the deft not to interefere with plaintiff's possession and enjoyment of the plaint site.

2. The plaint is based on the allegations that the site in question is 68 feet long and 35 feet wide, that it lies to the north of the plff's house, that the plff has been in possession of the site from the time he purchased it in 1947, that it had been in possession of his predecessors for more than 60 years next before suit, that the plff has also perfected his title by adverse possession, that the villagers of Kalkeri inimically disposed towards him complained that he had trespassed on the site, that finding was given against him after a summary inquiry that the site was Government site, that he preferred an appeal, that during the pendency of the appeal his pleader unauthoisedly made the admission that he was ready to purchase the property, and that the title was with the Government that the admission is not binding on the plaintiff, that the Collector thereupon dismissed the appeal, that the Revenue Tribunal also dismissed his appeal, that notice was served on Government and that in consequence this suit is brought.

2. The Government of Bombay resists the suit on the following grounds:-

(a). The plaintiff's claim of ownership to the suit land is denied.

(b). It is denied that the site is of plaintiff's ownership and has been in his possession and that of his predecessors continnuously for more than 60 years. His claim on the basis of adverse possession is not correct and hence denied.

(c). The allegations against the Revenue Officers made in paragraph 3 of the plaint are not admitted. The Prant Officer has held after considering the evidence

beforem him that the suit site belonged to Government.

3. The following issues were framed by my predecessor.

1. Is plff owner of the suit property ?
2. Is plff owner thereof by adverse possession of his and his predecessor in title ?
3. What relief is plff entitled to ?
4. What orders ?

4. My findings are :-

1. Yes.
2. Unnecessary.
3. Claim must be secured.
4. General issue.

Reasons.

5. The subject-matter of this suit is an open site in front of the plaintiff's house. The plaintiff claims to be in possession of the site as owner on the strength of purchase. The Govt. of Bombay, on the other hand, denies the plaintiff's title to the property. The matter was inquired into by the Revenue Authorities. Ultimately, an appeal was preferred to the Revenue Tribunal. The plff's appeal was dismissed for the following reasons:-

" The Collector's order was based on the admission of the Government's title to the disputed lands by the pleader of the appellant, Mr.G.V.Hiremath, who was engaged to argue the appeal before him. ".

The appellant has now contended that his pleader had no authority to make the admission and that the case should have been decided independently of that admission. It appears from the Collector's report dated 6th July 1945, that the hearing of the appeal was postponed at the request of the pleader on 27th March 1944 and it was thrice adjourned thereafter. At the postponed hearing the pleader stated that he was prepared to give up his claim and wanted time to consult his client. On the last day of hearing, which took place on 28th June 1944, the pleader made follwoing statement in writing:-

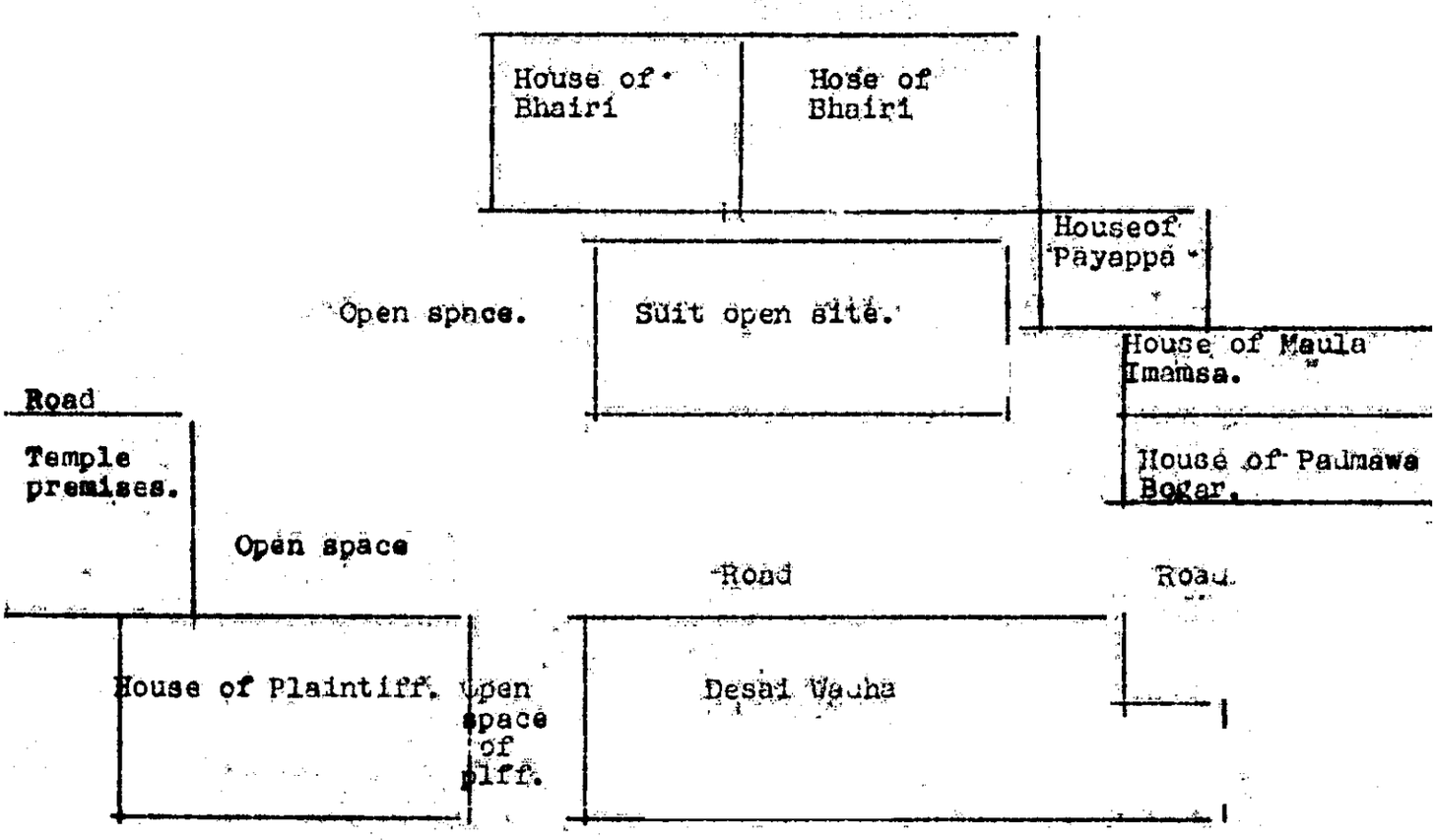
" The appellant gives up his grounds of appeal and

conceded the title of the Govt. and is willing to pay such occupancy price as is deemed fit under the circumstances. Transparently, the above statement is inspired by the client for the undertaking to pay occupancy price could only have proceeded upon his instructions. The suggestion that the admission was made without authority is not, therefore, correct. It is now well settled that a pleader has an implied authority to bind his client by an admission of fact made in the course of the proceedings. The admission is clear and un-equivocal and concludes the point in controversy. The appeal is, therefore, dismissed".

6. Now the plff's case has two parts: Firstly, as regards title. Secondly, as to possession. The deft contends that the site belongs to Government under section 37 of the Bombay Land Revenue Code.

7. The plff seeks to show that he has title to the site and that formerly a house stood on it.

8. The locus in quo is show on the following rough plan (see also Govt. Plan Ex.48)



9. This brings me to the documentary evidence. The plff's case is that he purchased the site under a sale deed

dated 29-7-1927(Ex.35). The boundaries are set out in the sale deed Ex. 35, and it is not the deft 's case that the sale deed Ex35 is not with reference to the suit site. There is another sale deed dated 6-3-1876 marked as Ex.52 in respect of the house situate to the north. The boundary to the south of that house is shown as " open site and the house of Sangappa". It is noticeable that the said Sangappa is the father of the plff's vendor. In a subsequent sale deed dated 16-11-1883 Ex.51, the southern boundary is shown as the " Open site belonging to Sangappa ".As a matter of pure probability, the house referred to in Ex.52 must have fallen down. This possition is made clear by the Commissioner in his report because the Commissioner found traces of the existence of a house on the site in question. Ex.39 dated 6-3-1908 is a sale deed in respect of Payappa's house t the east and the western boundary is shown as " Chanbasappa's open site". It is true that the boundaries mentioned in the sale deeds of a third party are not binding on the Government. They are however admissible in evidence as showing the conduct of parties . They certainly carry some evidentiary value coupled with the other documentary evidence and the surrounding circumstances.

10. I now turn to the Commissioner's report. His report is marked as Ex.27 and his plan as Ex.46. The commissioner reports as follows:-

" From the excavations I found there are foundation walls and they are all visible. In some places big stones such 4½ X 3 were found in the foundation and one big stone was found in the earth which appears to have been used as 'Chavani' on the door. In nearly half of the site, there is heap of earth which appears to be due to the fall of roof.In this way, I got excavated these places and the foundation walls are visible. From this, it can be said that there may be foundation walls in other places also. But as it was heavy work and as plaintiff said- it would suffice for this purpose, I stopped further excavation. Then a rough plan was made and measurements were taken and panchanama was drawn up but the village officers refused to sign. Then I closed the work and returned".

11. The Commissioner who is a responsible member of the

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Bar was examined before me at Ex.45 and he swears to the correctness of his report. As against this, the Kulkarni is examined on behalf of Government. His evidence is to the effect that the site has been vacant site during a period of 30 years and that he did not see plff and his vendor making wahiwat of the site. He says that he refused to sign the panchanama because the panchanama drawn up by the Commissinner was not true. In cross examination he admitted that he had been called by the Commissinner. The explanation he gave was that he was "Misled" by the Commissioner and that in consequence he was not present when the land was dug to find out if there were traces of foundation of a house standing on the land formerly. He admitted that he had been ordered by the Government Pleader to be present when the Commissioner visited the site. The following question was put to him by Mr. Desai for the plaintiff.

Question:- " Why did you go away"?

Answer:- " As the Commissioner asked me to come in the evening, I left. That day I did not go again to the suit site".

He further made the admission that he did not visit the suit site thereafter. To a question put by the court, his answer was that he did not make a report stating that he was not present at the time of the excavation. Finally, this is what he stated". I did not think it my duty to be present at the time of the excavation".

12. I quite think that the Kulkarni was delicately situated. He had reported that the site was Government site. In this position of affairs, he could not possibly have signed the panchanama seeing that the panchanama and the report of the Commissioner would have falsified his version.

13. In the face of the documentary evidence as to the plff's title to the suit site, and the Commissioner's report showing the existance of a building on the site formerly, I must hold that the plff proves his title to the property. Possessions goes with title and I hold accordingly.

In the result I issue a direction to the deft not to interefere with the plaintiff's possession and enjoyment of the suit site after declaring the plaintiff's title to the suit property. Plaintiff to get costs of this suit.

15-12-1948. Sd. A.C.Sequeira.

Civil Judge Sr.Dn.Bijapur.

"True Copy"

Dist Govt Pleader
Bijapur

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Suits.
Bijapur.
Encroachment on Government Land.

GOVERNMENT OF BOMBAY.
Legal Department,
Resolution No. 236
Bombay Castle, 8th January 1949.

Read Government Resolution, Legal Department No. 5028-A dated the 16th May 1947.

Letter from the District Government Pleader, Bijapur No. 956 dated the 17th December 1948 -- stating that the suit noted in the margin was decided against Government and requesting that an appeal may be filed in the Court of the District Judge at Bijapur.

In the Court of the Civil Judge (Senior Division) Bijapur.	
Civil Suit No. 454 of 1946.	
Kuntappa Doddappa Desai .... Plaintiff vs. The Province of Bombay .... Defendant.	
Claim Rs. 5/-.	

Letter from the Collector of Bijapur No. L.A.N. 180 dated the 30th December 1948 -- Forwarding the above with his concurrence.

RESOLUTION. - Sanction is accorded to the filing of an appeal in the Court of the District Judge, Bijapur from the judgement of the Civil Judge (Senior Division) at Bijapur dated the 15th December 1948 in the suit referred to above, on the lines of the Brief accompanying Government Resolution, Legal Department No. 5028-A dated the 16th May 1947.

By order of the Governor of Bombay,

Original R. M. Mehta

R. M. Mehta.
Assistant Secretary to Government.

Issued 8/1

To

The Revenue Department,
The Commissioner Southern Division,
The Collector of Bijapur,
The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Bijapur.

Subd. for signature 7/1

BM.
7:1.

7/1

Submitted after action.

2 There was file may now be filed
in S. B. 73/47.

The letter from the D.G.P. Bijapur
need no action as the case file
of the appeal has already been
sanctioned.

BDL
24/1

AS
Pinki

Civil Appeal No. 19
1949.

In the Court of the District Judge, Bijapur.

At Bijapur.

1. The Province of Bombay. — Appellant original- deft.

Vs.

1. Huntappa Doddappa Desai, Lingayat, 50, Agriculturist of Kalkeri, Taluka Sindgi, District Bijapur. — Respondent- original- plff.

Claim Rs. 5/-

The appellant preferrs this appeal against the judgment and Decree passed by the Civil Judge, Senior Division, Bijapur in Civil Suit No. 454 of 1946 for the following among other grounds:-

(1). The learned Civil Judge Sr.Dn. was wrong in holding that plaintiff is the onwer of the suit property.

(2). The learned Civil Judge Sr.Dn., ought to have held that the sale deeds Ex. 51 and 52 and Ex. 39 are inadmissible.

(3). That the boundaries in those two documents do not establish title of the plaintiff to the property.

(4). That the learned Civil Judge Sr.Dn. was wrong in holding that the boundaries are sufficient to establish the title.

(5). The lower court ought to have held that the evidentiary value of the said documents is the weakest type.

(6). The admission of the pleader before the Collector that the plaintiff has not title to the property is not considered by the lower court.

(7). The lower court ought not to have appointed the Commissioner at that late stage and ought not to have attached any value to the report by the Commissioner.

(8). The said report does not establish that the plaintiff has become the owner.

(9). The lower court has not correctly applied the law in this case.

(10). The judgment is against law, evidence and probabilities of the case.

(11). The learned Judge ought to have disbelieved the evidence for the plaintiff.

(12). It is therefore prayed that the Court be pleased to reverse the judgment and decree of the lower court with cots thoroughout.

Sd/- K.R.Roo

Date:- 19-1-49 District Government Pleader, Bijapur.

N.B.:- The judgment was delivered on 15-12-1948. The copy was applied on the same day but it was ready for delivery on 4-1-1949. So the appeal is in time.

Sd/- K.R Roo.
District Government Pleader, Bijapur.

"True Copy

District Govt Pleader
Bijapur.

S.By 3/7
S.2-7

(Decree in original suit Order 20 Rul. 6,7.)

D E C R E E.

IN THE COURT OF THE CIVIL JUDGE, SENIOR DIVISION,
AT BIJAPUR.

Exh.No.58.

Civil Suit No. 454 of 1946.

1. Kuntappa Doddappa Desai, Lingayat, age 30, Agriculture, of Kalkeri, Taluka Sindgi, District Bijapur. | Plaintiff

Against.

1. The Province of Bombay. Defendant.

Suit filed on :- 8-10-1946.
Suit registered on:- 11-10-1946.

Claim Rs. 5/- for the purpose of jurisdiction and pleader's fee is same.

The plaintiff sues that :

This is a suit for a declaration that the plaintiff is owner of the open site described hereunder situate at Kalkeri, tlauka Sindgi, and for an injunction against the defendant not to obstruct the plaintiff in the enjoyment of the said site in pursuance of the order passed by the District Deputy Collector, Northern-Division under section 37, Land Revenue Code, on 27-5-1943 with respect to the site as belonging to the Government.

The site is an open site 68' x 35' situate

in front of the plaintiff's house, across the road, at Kelkeri, with the following boundaries:-

To the East :- The houses of Payanna and Maulasa.
West :- An open site.
To the north. :- The houses of Irappa Bhairi and Ayyappa Madivalappa Desai.
South :- Road.

2. The suit site is of the ownership of the plaintiff and has been in his continuous and peaceful possession from the date of his purchase of it from the previous owner thereof in 1927; and the suit site has been in continuous undisturbed and peaceful possession as of right and as owners, of the plaintiff and his predecessros -in-title from times immemorial, in any case, for more than sixty years. The plaintiff is the owner of the suit site not only on the strength of his title but ~~of the prescriptive title by~~ possession against Government. The suit site was ~~never Government property~~ and was never used as such.

3. The villagers of Kalkeri disposed towards the plaintiff made false and mischieveous allegations to the Revenue Authorities about the suit site being Government property and about its being encroached upon by the plaintiff. The Revenue officers made a summary inquiry under section 37, L.R.Code and without going fully into the evidence and merits of the case, held that the suit was Government. The plaintiff appealed therefrom to the Collector. It appears that the plader for the plaintiff made an unauthorised and improper admission before the Collector without the knowledge and behind the back of the plaintiff that the site was of Government and that the plaintiff was prepared to purchase it at a fixed occupancy price. This admission of the pleader is in no way binding on the plaintiff and he is fully entitled to show that the admission was wholly unauthorised

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and that he was the owner of the suit site.The Collector dismissed the appeal on the strength of the so-called admission of the plaintiff's pleader,on 15-9-1944.The plaintiff went further in appeal against the Collector's order,but the the Government Revenue Tribunal dismissed it on 18-8-1945.The grounds by the Collector as well as the Revenue Tribunal for their conclusions are erroneous and one-sided,and are based on wrong and false assumptions All these orders,therefore,are not binding on the plaintiff,as being illegal and ultra vires.

4. The plaintiff thereupon gave notice to the Defendant the Province of Bombay through the Collector of Bijapur under section 80 Civil Procedure Code on 4-7-1946,but no amends have been made by the defendant to the plaintiff.Hence the plaintiff has been compelled to file this suit for declaring that the site is plaintiff's property and not of Government,and for in injunction to the defendant not to disturb the plaintiff's possession.

5. The cause of action for the suit arose towards the end of September 1945 when the final order of the Revenue Tribunal was intimated to the plaintiff.

6. The plaintiff estimates the value of the relief for purposes of Court fees and jurisdiction ,the relief being declaration and injunction as consequential relief at Rs. 5/-.

The valuation for the purposes of jurisdiction and pleader's fee is the same.

The plaintiff therefore claims:-

(a) A perpetual injunction to restrain the defendant and his servants and agents disturbing the possession of the plaintiff,declaring the plaintiff to be the owner of the plaint site.

(b) Costs of the suit

(c) any further or other relief the plaintiff is entitled to

(d) The plaintiff may be allowed to amend the plaint if and when necessary. Permission in this respect may be reserved.

The suit coming before A.C.Sequeira, Esquire, Civil Judge, Sr.Dn. Bijapur, on 15th December 1948 for the plaintiff Mr. N.R.Desai and Mr. R.K.Kodikal and for the defendant Government pleader Mr. K.B.Rao, the Court ordered and decreed as below:-

In the result I issue a direction to the defendant not to interfere with the plaintiff's possession and enjoyment of the suit site after declaring the plaintiff's title to the suit property. Plaintiff to get costs of this suit.

BILL OF COSTS.

Plaintiff.				Defendant.			
		Rs.	As. P.			Rs.	As. P.
1.	Plaint.	6	- 4- 0	1.	Vakalat.	0	-0- 0
2.	Vakalat	0	- 10- 0	2.	For exhs. 5,6,7 17,18,29,32.	4	- 6 -0
3.	For Exhs. 10A,11,15,16, 24,30,41.	4	- 6 -0	3.	Witness bhata.	11	- 0- 0
4.	Process .	7	- 0 -0	4.	Pleader's fee.	15	-0- 0
5.	Witness-bhatta.	11-	8- 0	5.			
6.	Commissioner's fee.	25	- 0- 0				
7.	Pleader's fee.	15	- 0- 0				
		69-	8- 0				30- 6- 0
	Costs disallowed.				Costs disallowed.		
	For Exhs. 10A,11,15,16.	2	- 8 -0		For Exhs.5,6,7,17, 18,29,32.	4-	6- 0
	Grand total	67	- 0 -0		Grand total	26	- 0- 0

29

Given under my hand and seal of the Court on 15th December 1948.

Sd. R.F.Fadatare,
Clerk.

Plaintiff's pleader.

Sd. A.C.Sequeira,
Civil Judge, Sr.Dn.,
Bijapur.
17-12-1948.

Defendant's pleader.

Seal of the Court.

The parties to this litigation are hereby informed that the document if any, produced by them if not taken (back) are liable to be destroyed (will be destroyed) after the disposal of appeals if any, preferred.

"True Copy"

District Govt Pleader
Bijapur

29/10/3

In the Court of THE ASSISTANT JUDGE,
at BIJAPUR.
Civil Appeal No. 19 of 1949 from the decree
in Civil Suit No. 454 of 1946 of the
Court of the Civil Judge, Senior Division,
Bijapur (Shri A.C.Sequeira).

Pleaders

Shri K.R.Rao, Government pleader. — 1. The Province of Bombay. — Appellant (Original defendant).

versus.

Shri N.P.Desai. — 1. Kuntappa Doddappa Desai. — Respondent. (Original plaintiff).

Claim Rs. 5/-.

This is an appeal against the judgment and decree of the Civil Judge, Senior Division, Bijapur, in Civil Suit No. 454 of 1946. The appellant is the original defendant. The respondent had brought this suit against the appellant, the Province of Bombay, for an injunction restraining it from interfering with the possession of the respondent of the open site in suit. The property involved in the suit is an open site 68 feet x 38 feet in the village of Kalkeri. The respondent alleged that he purchased it in 1927 and that his predecessors were in possession of the same all along; that there was an inquiry about the same held by the Collector and

during that inquiry the Prant Officer decided that it belonged to the Government. Against this order, he preferred an appeal to the Collector. But during the course of the hearing of that appeal, his pleader unauthorisedly gave a pursis admitting the claim of the Government, and thereupon the Collector dismissed that appeal. Against that decision, he went in appeal to the Revenue Tribunal, but his appeal was dismissed. Therefore, he brought this suit for a declaration of his title and injunc-tion as above. The Province of Bombay resisted the claim on the ground that neither the respondent nor his predecessors had title to the property in suit, nor were they in possession. It also submitted that the respondent had not become owner by adverse possession.

2. On these pleadings, the learned Civil Judge framed issues as to whether the respondent proved his title to the suit property and whether, in the alternative, he proved his adverse possession for the statutory period. He found, on taking evidence, that the title of the respondent was proved and therefore it was not necessary to go into the question of adverse possession. He also found that the respondent was in possession of the suit site on the date of suit and therefore granted his prayer for declaration and injunction. Against this decision, the original defendant - the Province of Bombay - has come in appeal.

3. The points which have been raised before me for decision are :-

(1) Whether the respondent proved his title to the suit property ?

(2) Whether the respondent proved his possession thereof on the date of suit ?

4. My findings on the above issues are both in the affirmative.

Reasons.

5. The property in suit is an open site 68 feet x 38 feet in the village of Kalkeri. The situation of that

site can be seen from the map Exh. 48. The respondent purchased this property from one Chanbasappa on 29-7-1927 (Exh. 36). The case for the respondent was that his predeces-sors owned this site and were in possession of the same and that after his purchase he also has all along been in possession. According to him, there was a house standing on this site for some time and that remnants of the same were visible when he purchased the site in 1927. He states that the walls fell down about 30 years before he gave evidence. His vendor Chanbasappa was using the site for storing cow-dung cakes and fuel. He himself was keeping stones and fuel on the site. The map Exh. 48 shows that he has his house to the south-west of this site. There is a road going by the southx of this site. It starts from the east and takes a slight turn at the south-western corner of the site and then goes along towards the east, parallel to this site. In support of his case, the respondent produced three sale deeds of adjoining houses in which on the boundaries there is a description of the suit site. The oldest of these deeds is Exh. 52 passed on 6-3-1876. In this deed, the southern boundary shows an open site and the house of Sangappa. Sangappa was the father of the respon-dent's vendor Chanbasappa. Then there is the sale deed Exh. 51, dated 16-11-1883, which shows to the south an open site belonging to Sangappa. The third deed is for the property to the east of this site and is dated 6-3-1908. In this deed, the suit site had been referred to as the open site of Chan-basappa. Now, it has been submitted for the appellant that these deeds are not admissible in evidence for the purpose of showing the title of the respondent to the present site. Reliance is placed on several rulings, the principal of which is the case of Shrinivas Dau Bavri v. Meherbai (41 Bombay 300). In this case, the question involved was with regard to the recitals in a release deed not passed between the parties to this litigation in which there was a recital about the redemp-tion of a certain mortgage which was involved in that suit.

It was held that the recitals in the release deed were not evidence against a third party. I do not think that the decision of this case will help the appellant in the present case. In that case, it appears, the substantitive recitals in the deed were tried to be used in ord r to sh w the fact of the redemption of the mortgage --- a fact which was referred to in the deed and which was in issue in that suit. In the present case, we are concerned not with the title as disclosed in the deed produced on behalf of the respondent, but with the corroboration of the word of the respondent that the site belonged to himself and was in his possession. This is sought to be deduced from the fact that in the boundaries the parties had referred to the open site which is involved in the present suit as belonging to the respon-dent's predecessors. Therefore, it is a question of the conduct of the parties and the recital is not used in order to have a binding effect conclusively on the point at issue in the case which regarding the title of the respondent. In my opinion, the documents and the recitals in the three title deeds could be so used by the respondent and the decision governing this point would be the case of Ningawa v. Bharmappa (13 Bombay 63). I think, therefore, that these recitals could be looked into in support of the respondent's case.

6. But it is submitted for the appellant that these recitals themselves would not help the respondent. It is argued that whereas the sale deed Exh. 60 of 1876 refers to this boundary as the open site and house of Sangappa the subsequent sale deed for the same property (Exh. 61) of ~~1883 recites in~~ this 1883 refers only to an open site. Now, there is no positive evidence that there was a house on the open site in 1876 which fell down before 1883. But I think that since the first referred to a house and the subsequent deed between the same parties refers only to the open site, there would be a reasonable presumption of the possibility

a house during recent times on the site as contended by the respondent. There is another fact which would go to show that there must have been some house or building on the open site during recent times. If we look at the map Exh. 48 we find that there are houses along side the open site on all sides. The road takes a winding course before it runs parallel to the southern boundary of the open site. The course of this road, therefore, would go to show that there must have been some structure on the open site in suit. In my opinion, therefore, the situation of the houses and of the road would further go to show that there must have been a building on the open site in suit. In my opinion, therefore, even if we omit a reference to the sale deeds produced on behalf of the respondent, still the situation of the site and the circumstances obtaining there would corroborate the statement of the respondent that the open site had a structure and that it belonged to his predecessors.

17. It was submitted for the appellant that when there is an open site in suit for which an inquiry is made under the Land Revenue Code, then when the respondent claims that site, he must prove his title by positive evidence. Otherwise, the site would vest in Government under section 37 of the Land Revenue Code. I entirely agree with this proposition. But in the present case, the respondent could not have led any better evidence to prove his title. It is an open site in a village and it is difficult to conceive of any positive documents coming from the custody of the respondent's predecessors. The respondent purchased the site in 1927 and no question appears to have been raised till 1942. If the site belonged to Government or did not belong to any of the villagers, then we would have expected to see a beaten path at least on some part of this site. The road would have crossed the open site and we would not have found it taking a turn at the south-western corner of the open site as could be seen from the map Exh. 48. It

has not been suggested as to why the respondent should have purchased the open site in 1927 if it was Government property. There was then no question of his trying to maintain a claim against the Government.

8. There is one circumstance on which much stress has been laid on behalf of the appellant. It is admitted that there was an inquiry with regard to this site. The Front Officer found that this site belonged to Government. The respondent preferred an appeal to the Collector. During the course of that appeal, his pleader Shri Hirenath gave a pursis that the respondent admitted the title of Government and was willing to pay such occupancy price as was deemed fit by the Government. According to the respondent, he did not give instructions to his pleader to file such a pursis. I do not think that his word on this point was entitled to belief. The pleader would never have give such a pursis if he had no instructions. Actually, it appears that he gave this pursis after the hearing of the appeal was postponed. Therefore, it is clear that he must have consulted the respondent before he put in such a pursis. It is submitted for the appellant that inasmuch as he had admitted the title of the Government in that inquiry, his present statement would not be entitled to belief. In the first place, his admission there would not be binding on him in this suit. The question would be not be res judicata. It is quite likely that situated as he was then, he might have thought it prudent to concede the title and pay such occupancy price as the Government would ask for and cut short litigation. It would not, I think, conclusively show that the site did belong to Government or that he knew that he had no title to the property. We can only take the circumstance for what it is worth and I think that it would be quite reasonable to hold that the pursis was given in order to serve the purpose for the time being and also to cut short the litigation. It may be that he and his legal advisers thought that it would be difficult to prove title from the evidence

which they had at that time, and therefore made a gesture by way of concession. I think, therefore, that the fact that the panchayat was given a public purpose, against the evidence which I have discussed above, will not detract from the worth of the respondent and the evidence which he has adduced. In my opinion, therefore, there is nothing to disbelieve his statement that he and his predecessors are making some use of this open site for the purpose of storing fuel or stones etc. In consideration of the evidence, therefore, I am of the opinion that there is nothing in the evidence of the respondent to disentitle him to believe. I, therefore, find that the open site did belong to the respondent's predecessors and that they and he were throughout in possession of the same.

9. On my findings as above, therefore, the respondent established his title and possession of the suit site and therefore the decision of the trial Court was correct. The appeal, therefore, fails.

10. Order.

The appeal is dismissed, the applicant to pay the cost of the respondent and bear his o

sd/- V.N. Palekar
Assistant Judge.

30th October, 1950.

"True Copy"

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2719—5,760—11-44—R(s)* Civ. A 42 k.

ಅಪೀಲಿನೊಳಗಿನ ಹುಕುಮುನಾಮೆಯು (ಆರ್ಡರ ೪೧, ರೂ. ೪೫).

(ಫಾರ್ಮ ನಂಬರು ೯, ಪರಿಶಿಷ್ಟ ಗ, ತಿಡ್ಯೂಲ ೧)

ಹುಕುಮನಾಮೆಯು

ಬೆಳಗಾವಿಯಲ್ಲಿಯ ಅಡಿಶನಲ್ ಜಜ್ಜ ಕೋರ್ಟಿನಲ್ಲಿ

ಮುಕ್ಕಾಮು ಬೆಳಗಾವಿ ಇಲ್ಲಿ. ನಿ॥

ಡಿಸ್ಟ್ರಿಕ್ಟ — ಅಪೀಲ ಮೊಕದಮೆ ನಂಬರು ೧೯ ಇಸವಿಯ ಪೈಕಿ

(೧) ಡಿ. ಪೈಕ್ಸ್ ಪ್ಲೈನ್ಸ್ ಆಫೆ ಮುಂಬಯಿ. } ಅಪೀಲೆಂಟ (ಮೊದಲನೇ ಪ್ರತಿವಾದಿ).

ವಿರುದ್ಧ

(೧) ತುಂಬಟ್ಟಾ ದೊಡ್ಡಟ್ಟಾ ಸೇನಾಯಿ — ಅಂಗಮ್ಮ, ವಯಾ ೫೦, ಶೇತಕಿ, ನಾಗಾ ತಲಕೇರಿ ತಾಲ್ಲೂಕ ಹೊರದಲ್ಲಿ — } ರಿಸ್ಪಾಂಡೆಂಟ (ಮೊದಲನೇ ಫಿರ್ಯಾದಿ).

ಬೆಳಗಾವಿಯಲ್ಲಿಯ ಡಿಸ್ಟ್ರಿಕ್ಟ-ಜಜ್ಜ ಕೋರ್ಟಿನ ಸನ್ ೧೯೪೨ ನೇ ಇಸವಿಯ ಸಂವತ್ಸರದಲ್ಲಿಯ ತಾರೀಖು ೧೫ ಡಿಸೆಂಬರ — ತಿಂಗಳ ಸನ್ ೧೯೪೨ ನೇ ಇಸವಿಯ ಹುಕುಮು ನಾಮೆಯ ಮೇಲೆ ಸದರೀ ಅಪೀಲು ದಾಖಲ ಮಾಡೋಣಾದರಲ್ಲ ಬಂದಿರುತ್ತದೆ.

ಮೇಲೆ ಕೇಳಿದ — ಅಪೀಲೆಂಟ — ಇವನು ಸದರಿ ತಾರೀಖಿನ ಹುಕುಮು ನಾಮೆಯ ಮೇಲೆ ಬೆಳಗಾವಿ ಇಲ್ಲಿಯ ಡಿಪ ಸಂ॥ — ಕೋರ್ಟಿಗೆ ಅಪೀಲು ಮಾಡಿರುತ್ತಾನೆ.

ಈ ಅಪೀಲು ಸನ್ ೧೯೪೩ ಅಕ್ಟೋಬರ ತಿಂಗಳ 30 ತಾರೀಖಿನ ದಿವಸ ಶ್ರೀ V.N. Palekar ಅಪೀಲೆಂಟ ಹುಬ್ಬುಮುಂಡೆ, ಅಪೀಲೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಶ್ರೀ K.R.C., ನಿಪ್ಪಿ. ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ರಿಸ್ಪಾಂಡೆಂಟನ ತರ್ಫಿನಿಂದ ವಕೀಲ ಶ್ರೀ N.P. ದೇಸಾಯಿ — ಇವರ ಸಮಕ್ಷದಲ್ಲಿಯೂ ಸುನಾವಣಿಯ ಬಗ್ಗೆ ಬಂದಿದ್ದರ ಮೇಲಿಂದ ಈಗೆ ಹುಕುಮು ಮಾಡಿಯಿದರಲ್ಲ ಬರುತ್ತದಲ್ಲ —

ಅಪೀಲನ್ನು ರದ್ದು ಮಡಿವಿದೆ. ಅಪೀಲೆಂಟ — ರಿಸ್ಪಾಂಡೆಂಟನ ಖರ್ಚ ತೆಂಡ ಬೇಕು ಮುಟ್ಟಿ ತಪ್ಪದು ತಾನು ವಿಕಿವೆ ಬೇಕು —

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ಈ ಕೆಳಗೆ ವಿವರಿಸಿದಂತೆ ಈ ಅಪೀಲಿಗೆ ಆದ ವೆಚ್ಚವನ್ನು ಎಂದರೆ, ಒಟ್ಟಿಗೆ

ರೂಪಾಯಿಗಳನ್ನು

ಕೊಡಬೇಕು; ಮತ್ತು\ಮೂಲ ದಾಖೆಯ ವೆಚ್ಚವನ್ನು

ಕೊಡಬೇಕು.

ಅಪೀಲಿನ ವೆಚ್ಚವು.

ಅಪೀಲೆಂಟ.	ರಕಮು.			ರಿಸ್ಪಾಂಡೆಂಟ.	ರಕಮು.		
	ರೂ.	ಆ.	ಪೈ		ರೂ.	ಆ.	ಪೈ
೧. ಅಪೀಲಿನ ಯಾದಿಯ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	೬	೪	-	೧. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸ್ಟಾಂಪು....	-	-	-
೨. ಅಧಿಕಾರ ಪತ್ರದ ಬಗ್ಗೆ ಸದರ	-	-	-	೨. ಅರ್ಜಿಯ ಬಗ್ಗೆ ಸದರ	-	-	-
೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ....	-	-	-	೩. ದಾಖಲಾದ ಕಾಗದಗಳ ಬಗ್ಗೆ ಸದರ.	-	-	-
೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ	೨	-	-	೪. ಪ್ರೊಸೆಸ್ಸುಗಳ ಬಜಾವಣಿ			
೫. ೧೪೧ ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೪	-	-	೫. - - ರೂಪಾಯಿಗಳ ಮೇಲೆ ವಕೀಲನ ಫೀ	೧೪	-	-
೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	೧೩	೨	೦	೬. ನಕಲುಗಳ ಬಗ್ಗೆ ಫೀ	-	-	-
೭. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ ಅ. [illegible]	೧೦	-	-	೭. ಹರಕತ ಅರ್ಜಿಗೆ ಸ್ಟಾಂಪು	-	-	-
				೮. ಉಲಟ ಹರಕತಿಯ ಮೇಲೆ ವಕೀಲನ ಫೀ	-	-	-
ಒಟ್ಟು....	೪೬	೦	೦	ಒಟ್ಟು....	೧೪	-	-

ಈ ಹೊತ್ತು ತಾರೀಖು 30 ತಿಂಗಳು [illegible] ಸನ್ ೧೯೪೫ನೇ ಇಸವಿಯ ದಿನ

ನಮ್ಮ ಸಹಿ ಮಾಡಿ ಮತ್ತು ಕೋರ್ಟಿನ ಮೊಹರು ಮಾಡಿ ಕೊಡಲ್ಪಟ್ಟಿತು.

ತಪಾಸು ಮಾಡಿ ನೋಡಿತು ಸಮನಾಗಿ ಅದೆ.

Sd/- [illegible]
ಕೀಳಾರಕೋರ್ಟು

Sd/- V.N. Patel
ಅಸಿಸ್ಟೆಂಟ್ ಸೂಪರಿಂಟೆಂಡೆಂಟು ಜಜ್ಜು.
17-11-1945

Sd/- K.R.R.
ಅಪೀಲೆಂಟ ವಕೀಲ.

ರಿಸ್ಪಾಂಡೆಂಟ ವಕೀಲ.

[ಈ ನೊಕದಮೆಯಲ್ಲಿಯ ಪಕ್ಷಕಾರರಿಗೆ ಹೀಗೆ ಸೂಚನೆ ಕೊಡುವದರಲ್ಲಿ ಬರುತ್ತದಲ್ಲ, ಅವರು ತಾವು ಹಾಜರು ಮಾಡಿದ ಯಾವನಾದರೂ ದಸ್ತೈವಜುಗಳನ್ನು ಅವರು (ತಿರುಗಿ) ತೆಗೆದುಕೊಂಡು ಹೋಗದಿದ್ದರೆ ಆ ದಸ್ತೈವಜುಗಳ ಅಪೀಲು ಮಾಡಿದ್ದರೆ, ಆ ಅಪೀಲು ನಿಕಾಲೆಯಾದ ಮೇಲೆ, ನಾಶ ಮಾಡುವದಕ್ಕೆ ಪಾತ್ರವಾಗುವವು (ಅಂದರೆ ಅವು ನಾಶ ಮಾಡುವದರಲ್ಲಿ ಬರುವವು.)]

"True Copy"

[illegible]
Asst. Govt. Pleader
[illegible]

4/1 B9

Suits.

Bijapur.

Encroachment on Government Land.

GOVERNMENT OF BOMBAY
Legal Department
Resolution No. 298
Bombay Castle 5th January 1951.

Read Government Resolution, Legal Department No.236 dated the 8th January 1949.

Endorsement from the District Government Pleader, Bijapur No. 772 dated the 7th November 1950 forwarding an uncertified copy of judgment and stating that the First Appeal No.19 of 1949 filed by Govt in the court was decided by the Assistant Judge Bijapur on 30th October 1950, when the following order was passed:-

In the Court of the Civil Judge (Senior Division) Bijapur.
Civil Suit No.454 of 1946.
Kuntappa Doddappa Desai - Plaintiff
Vs.
The Province of Bombay - Defendant
Claim Rs. 5/-

"The appeal is dismissed. The appellant to pay the cost of the respondent and bear its own".

Letter from the Collector of Bijapur,No.LAW- 180, dated the 23rd November 1950 stating that this is not a fit case for filing a Second Appeal.

RESOLUTION:- The result of the appeal is recorded.

By order of the Governor of Bombay,

Issued 5/1

original. E. Bhamgara

E. P. Bhamgara
Additional Assistant Secretary to Government.

To
The Revenue Department,
The Collector of Bijapur,
The Secretary, Bombay Revenue Tribunal,
The District Government Pleader, Bijapur.

P.H.R.
4/1

Submitted for signature.

4/1

A.A.S.

[illegible] after issue
file in S. Bij. 3/47

1551
10/1 42

A. Sols.

10/1

S Bij 3/47